

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN BONILLA, *et al.*,

No. C-05-3259 EMC

Plaintiffs,

v.

**FINAL PRETRIAL CONFERENCE
ORDER**

KDH BACKHOE SERVICE, INC., *et al.*,

Defendants.

A Final Pretrial Conference was held in this matter on October 23, 2006. Pursuant to Federal Rule of Civil Procedure 16(e), this order memorializes the rulings made at the Final Pretrial Conference.

A. Defendant George Claire Humphrey

In their joint pretrial statement, the parties indicated that they expected to stipulate to a dismissal of George Claire Humphrey. A stipulation and proposed order for dismissal was filed on October 23, 2006, shortly before the Final Pretrial Conference was held.

B. Defendant Wayne Humphrey

Wayne Humphrey appears to have filed for bankruptcy in the Eastern District of California. Counsel for Defendants provided to the Court a copy of a notice of stay of proceedings that bankruptcy counsel for Wayne Humphrey prepared for this case. The parties agreed, and the Court holds that, because of the bankruptcy proceeding, there is an automatic stay with respect to the suit against Wayne Humphrey. *See* 11 U.S.C. § 362.

1 C. Defendant KDH Backhoe

2 There is no evidence that KDH Backhoe has filed for bankruptcy. Accordingly, there is no
3 basis for a stay of the litigation with respect to KDH Backhoe.

4 D. Plaintiffs' Motion in Limine

5 Plaintiffs have moved to exclude evidence of representations or oral modifications of the
6 collective bargaining agreements. None of the Defendants filed an opposition to the motion in
7 limine. Because Defendants failed to oppose the motion, and because case law supports Plaintiffs'
8 motion, the motion in limine is hereby **GRANTED**. *See, e.g., Central States, Southeast &*
9 *Southwest Areas Pension Fund*, 870 F.2d 1148, 1149 (7th Cir. 1989) (holding that a plan is "entitled
10 to enforce the writing without regard to understandings or defenses applicable to the original
11 parties"); *Waggoner v. Dallaire*, 649 F.2d 1362, 1366 (9th Cir. 1981) (noting that provision of the
12 LRMA "does not specifically prohibit oral modifications of written trust agreements, but such a
13 limitation may be inferred from the context of the rest of the parent section").

14 E. Submission to Court Based on Undisputed Facts

15 At the Final Pretrial Conference, both counsel for KDH Backhoe and counsel for Plaintiffs
16 stated that they did not wish to present any testimony or other evidence to the Court. The parties
17 therefore submitted the case for judicial resolution based on the undisputed facts and evidence
18 already submitted. Accordingly, the trial scheduled to begin on October 26, 2006, was vacated.

19 F. Proposed Findings of Fact and Conclusions of Law

20 The parties submitted joint proposed findings of fact and conclusions of law as part of the
21 pretrial filings. After the Final Pretrial Conference, the Court instructed Plaintiffs to submit updated
22 proposed findings of fact and conclusions of law by October 27, 2006. The Court further instructed

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1 Plaintiffs to submit a proposed judgment (with respect to KDH Backhoe). In order to give counsel
2 for Defendants an opportunity to apprise Wayne Humphrey's bankruptcy counsel of the events that
3 transpired at the Final Pretrial Conference, the Court stated that it would not enter any judgment
4 before October 30, 2006.

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6 IT IS SO ORDERED.

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8 Dated: October 24, 2006

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11 EDWARD M. CHEN
12 United States Magistrate Judge
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